

ISSUES RELATED TO INCREASING THE UPPER LIMIT OF THE CRIMINAL PENALTIES FOR SERIOUS CRIMES: SOCIAL AND LEGAL RESEARCH (ON THE EXAMPLE OF UKRAINE)

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ABSTRACT

The realization of the state-initiated humanization process, as well as reforming the criminal-executive system with the aim of reorientation of its activities from the punitive to the re-socialization and probation in accordance with the international standards, requires bringing the current legislation in line with such norms and standards. Such process itself is long and the detailed research is needed. An important role in this process is played by the comprehensive and complete examination of both the legislation and the public opinion. At present one of the main issues, which prompt the regular discussions among the scientists, researchers, representatives of the public and religious organizations, is the expediency of increasing the upper limit of the imprisonment period. The actuality of that issue is explained by the fact that the scientists have still not been able to reach the common view, despite the long period of the relevant discussions. Some of them believe that the current legislative norms are the relic of the Soviet past and it is time to replace them by more humane measures. Some specialists are convinced that the existing imprisonment periods are short for the re-socialization of the convicted persons. Therefore, there is an objective need to make the research of the current state of the criminal law and the relevant judicial practice, which at present should be undoubtedly updated. The theoretical and legislative framework requires the introduction of the advanced foreign experience into the Ukrainian criminal-executive system. The improved system would give the possibility to the convicted persons to be punished without any prejudice to their personality and would promote their full re-socialization. As a result, it would decrease the crime rate and improve the national security.

Keywords: Imprisonment Period, Upper Limit of the Imprisonment Period, Analysis, Re-Socialization, Questionnaire.

INTRODUCTION

The main task of the Concept of reforming (development) of the penitentiary system of Ukraine for 2018-2020 is further reforming of the criminal-executive institutions for the unconditional humanization of the criminal-executive mechanism system. The reforms will be

done in different directions, one of which is the improvement of the legislation, which regulates the activities of the State Criminal-Executive Service of Ukraine.

One of the new ideas is the introduction of the draft Law of Ukraine On ordering the criminal punishment for the especially grave crimes (Explanatory note to the draft Law of Ukraine on amendments to certain legislative acts of Ukraine regarding the use of sentences in the form of life imprisonment)¹. It envisages changes and amendments in the Criminal Code of Ukraine and Criminal-Executive Code of Ukraine. They will be directed at improving the conditions of imprisonment and serving sentences by the long-term convicts or lifers. The main of them are the following:

Amendments to the articles 64 and 68 of the Criminal Code of Ukraine are intended to improve the procedure of imposing the life imprisonment sentences. Such punishment is not used for women and persons, who are accused of preparing or attempting the crime, as well as for the accomplices, who did not directly participate in committing the crime. It will ensure more differentiated approach to the process of choosing penalties and following the principle of justice and protection of vulnerable categories of offenders.

It also envisages the introduction of the possibility of substituting the part of the sentence, which is related to the deprivation of liberty, by more lenient sentence or conditional release of such convicts (amendments to the articles 81 and 82 of the Criminal Code of Ukraine).

The proposed wording of the article 18 and the proposal to exclude the article 152-2 of the Criminal-Executive Code of Ukraine are intended to bring the provisions of that Code into line with other changes and amendments.

Changes to the part 7 of the article 154 of the Criminal Code of Ukraine establish the mechanism of the re-examination of the early release cases after the previous refusal. The need for such initiative is due to the fact that at present there is a hyperbolized and subjective idea of punishment, which should be as strict as much as possible in the opinion of the respondents. Many people think that strict punishment has the real power to influence positively the crime rate. So, the State tries to contain the increase of crime rate with the severe measures (Centes et al., 2018; Lennon, 2018; Dolliver et al., 2018; Tan et al., 2018). At first glance, it seems like a faster and cheaper way to combat crime. However, even with the increase in the number of convictions to more strict and long-term punishments, the positive effect is not achieved. Besides, Denysova also emphasizes that, if it would be desirable to reduce the crime rate more quickly as elements of threats, it is impossible to achieve that purpose by increasing the term of strict punishment.

However, at present the Ukrainian society is not unambiguously concerned with such legislative initiative, because of its too tolerant attitude to the convicts, although the public request for the strict punishment is still in force (Saco & Dirks, 2018).

Within the framework of such legislative initiative the Subcommittee on reforming the penitentiary system of the Committee of the Verkhovna Rada of Ukraine on legislative support of the law enforcement bodies together with the Ministry of Justice of Ukraine at the meeting on the activities of the law enforcement bodies and penal establishments on June 21, 2018 made the decision to carry out the research on learning the opinion of the law enforcement officials, scientists and the society in general in order to determine the expediency of increasing to the certain extent the upper limit of the punishment in the form of imprisonment. The questionnaire was made through the online survey by the Google forms system during July-August 2018.

LITERATURE REVIEW

The Current State of Affairs Related to Sentencing in the Form of Deprivation of Liberty for Certain Terms

The issue of the humanization of some norms of criminal legislation regarding the use of sentences in the form of life imprisonment is as not been resolved, despite the fact that this type of punishment (life imprisonment) is associated with numerous serious problems.

There are still no proper conditions for holding the persons, who are sentenced to life imprisonment. For the purpose of isolation of that category of convicts special sectors in 12 penal establishments and in 22 pre-trial institutions are created. Unlike all other types of punishment, life imprisonment has such feature as the constant increase in the number of relevant convicts (in average, 100 persons per year). It contributes to the unjustified increase of the number of lifer's imprisonment because of the current punitive practice of legal proceedings. The increase in such category of convicts inevitably affects the views of the civil population. Ordinary citizens from the nearest social environment are actually involved into the sphere related to the execution of that punishment (Barrett et al., 2018; Apel, 2013).

It is still possible to sentence women to life imprisonment in Ukraine. There are only 23 female lifers at present. Such practice does not perform the significant preventive function. That is why it is no longer used in almost all European countries. Therefore, the issue of the implementation of such punishment and the possibility of the early release of lifers require the new forms of such punishment.

International Experience in Sentencing in the Form of Imprisonment for a Specified Period

As it determined by the specialists in the international standards concerning the treatment of convicts, the decision whether to represent a life-threatening condemned threat to society is always controversial. One of the most important steps in determining the effective life imprisonment policy is the development of the fair, well-considered and humane procedure of assessing the readiness of lifers to be released.

The international instruments, unlike the Ukrainian legislation, do not contain any obstacles for the early release of lifers. Such legislative initiative should take into account the requirements of the international standards in that sphere. Since 1976 the Committee of Ministers of the Council of Europe has adopted a number of resolutions and recommendations regarding the long-term and life imprisonment, including the rules, which envisage the possibility of the conditional release for all categories of inmates. Besides, the requirement for the real possibility of early release is the integral part of the normative basis of the European Court on Human Rights in relation to the Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (*László Magyar v. Hungary*, dated May 20, 2014 (application No. 73593/10), *Vinter v. the UK* (no. 66069/09, 130/10 and 3896/10), *Kafkaris v. Cyprus* (no. 21906/04), *Léger v. France* (no.19324/02) (Explanatory note to the draft Law of Ukraine on amendments to certain legislative acts of Ukraine regarding the use of sentences in the form of life imprisonment)¹. In those cases the European Court concluded that when the national law does not provide the possibility of the sentence revision for the convicts sentenced to life imprisonment or the possibility of the early release, such life sentences do not follow the standards of the article 3 of the above mentioned Convention.

The requirement to provide the possibility of early release to lifers is also contained in the standards developed by the European Committee on Prevention of Tortures (Actual/Real Life Immunity Memorandum (CPT (2007) 55) and many other standards. It is also justified in terms of the security society, which was confirmed by the scientific research in the sphere of criminology.

Lifers are the only category of convicts, who can not be early released (on parole), despite the fact that the issue has been solved successfully in other countries. Thus, according to the statistics published by experts of the Council of Europe, the convicts, who are sentenced to life imprisonment, being subject to early release on parole, are less likely to be imprisoned again, as they are well aware that they will be strictly sentenced again (even to death penalty), if they commit crime once more. Besides, they are elderly, and one should remember that the age also treats crime.

In many countries, in which the life imprisonment sentence can be imposed, there are certain mechanisms for considering the review of such sentence after certain minimum period of imprisonment, envisaged by the national law. Such mechanism is provided by the legislation of 32 countries: Albania (25 years), Armenia (20 years), Austria (15 years), Azerbaijan (25 years), Belgium (15 years with the extension to 19-23 years for recidivists), Bulgaria (20 years), Cyprus (12 years), Czech Republic (20 years), Denmark (12 years), Estonia (30 years), Finland (12 years), France (usually 18 years and for certain convicts-30 years), Georgia (25 years), Germany (15 years), Greece (20 years), Hungary (20 years, unless other term is decided by the court), Ireland (7 years, with the exception for some types of murder), Italy (26 years), Latvia (25 years), Liechtenstein (15 years), Luxembourg (15 years), Moldova (30 years), Monaco (15 years), Poland (25 years), Romania (20 years), Russia (25 years), Slovakia (25 years), Slovenia (25 years), Sweden (10 years), Switzerland (10-15 years), the former Yugoslav Republic of Macedonia (15 years) and Turkey (24-36 years).

In Scotland, when sentencing to the life imprisonment, a judge is obliged to set a minimum term, despite the probability that such period would exceed the life of the prisoner.

Ukraine is not only different from this indicator. By the end of 2018, the total number of convicts, who had been sentenced to life imprisonment in Ukraine, was 1,132 that are 2.8% of the total number of convicts. In England that proportion is 6%, in Turkey-4, 4%, in Italy-3%, but in absolute figures Ukraine is number one in Europe for the number of such convicts. For example, in the Netherlands and Poland there are only two dozen persons, who serve the life sentence, and in Ukraine there are almost 100 times more (Barash & Rudnytskyh, 2018).

Thus, we can conclude that effective mechanism for resolving that problem has been existing for a long time in many countries. Taking into account the features of the national model of the State Penitentiary Service of Ukraine and probation, such mechanism can be integrated into the Ukrainian legislation.

MATERIALS AND METHODS

Defining the Legal Regulation of Sentences

In accordance with the goals and objectives of the research, the author used the general scientific and special methods of the scientific approach. Their application gave the possibility to analyze comprehensively the issues related to the appointment of punishment. The normative basis of the research is the Constitution of Ukraine, the Criminal and Criminal-Executive Codes,

current legislative and normative acts, draft legislative and normative acts, which regulate relations in the sphere of execution of criminal punishment.

Methods of comparative legal and documentary analysis were used in defining the shortcomings and gaps of the national legislation, which regulates the procedure for the appointment of punishment in the form of life imprisonment and release from it both in Ukraine and in the world.

Working Out and Synthesis of the Received Results

Due to the statistical method, it was possible to carry out the processing of statistical data concerning the lifers and the practice of sentencing to life imprisonment.

The analytical method was used to analyze the results of the questionnaire, as to the expediency of increasing the upper limit of punishment in the form of deprivation of liberty for certain period. The method of statistical analysis gave the possibility to study in detail the results of the questionnaire for its each section. The legal comparative method gave the possibility to compare the results according to certain criteria. In this regard, the article reveals not only the views of the respondents on the posed questions, but also follows the relationship of the answer depending on different factors, e.g. the occupied position (sphere of employment). The prognostic method is used to predict the legal regulation of that issue in future. Besides, the method of legal forecasting provides the possibility of continuing the corresponding research on the basis of the obtained results. As a consequence, the implementation of the relevant international legislative norms would be appropriate.

RESULTS AND DISCUSSION

On the basis of the Committee of the Verkhovna Rada of Ukraine on Legislative Support of Law Enforcement Bodies, as well as the Ministry of Justice of Ukraine, the Working group on the penitentiary reform initiated to the research for learning the opinion of the scientists, representatives of public and religious organizations, lawyers and law enforcement officials with the aim of examining the appropriateness of resolving at the legislative level the issue of increasing the upper limit of punishment in the form of imprisonment for certain period for the especially grave crimes.

804 specialists took part in the survey, in particular (Table 1):

Table 1 SPECIALISTS, WHO TOOK PART IN THE SURVEY		
	Number	Percentage
Lawyer (advocate)	61	7.60%
Higher education institution	6	0.70%
Public organization	1	0.10%
Civil society activist	1	0.10%
State Criminal-Executive Service	83	10.30%
National Police	165	20.50%

NGO	1	0.10%
Convict	1	0.10%
Political party	1	0.10%
Prosecutor's Office	392	48.70%
State Security Service	65	8.00%
Court	27	3.40%

Their length of their work in the relevant sphere (Table 2):

Years	Number	Percentage
1-3	94	11.7%
4-8	223	27.8%
9-15	267	33.1%
over 15	220	27.4%

Responding to the question:

"In your professional opinion, is the upper limit of imprisonment for certain period of 15 years envisaged by the Criminal Code of Ukraine, is sufficient for correction?"

The respondents replied (Table 3 & Table 4):

Options for Answers	Number	Percentage
Yes	231	28.7%
No, it is necessary to increase	495	62.3%
No, it is necessary to decrease	7	0.8%
It is difficult to respond	49	6.1%

Table 4 RESPONSES TO THE QUESTION: IN YOUR PROFESSIONAL OPINION, IS THE UPPER LIMIT OF IMPRISONMENT FOR A CERTAIN PERIOD OF 15 YEARS, ENVISAGED BY THE CRIMINAL CODE OF UKRAINE, IS SUFFICIENT FOR CORRECTION?		
Options for Answers (23)	Number	Percentage
No response provided	5	0.6%
It is not the priority issue like the crime prevention	2	0.2%
It is necessary to return the death penalty	1	0.1%
The increase of the upper limit is not appropriate yet because of the poor living conditions at the penal establishments. Long-term imprisonment causes psychological problems among the inmates.	2	0.2%
It is necessary to increase the upper term in case of return to the death penalty and on summation of several sentences.	1	0.1%
15 years is acceptable, because it is possible to sentence to life imprisonment.	2	0.2%
It depends on the set of circumstances: type of crime, its graveness, repeatability, offender's personality, circumstances of the committed crime, etc.	11	1.4%

This question was put to judges, prosecutors, and lawyers (advocates) (Table 5):

“Was there any case in your practice, when during the sentence appointment it was considered that 15 years imprisonment was insufficient and life imprisonment was too severe punishment for the offense?”

Table 5 A RESPONSE TO THE QUESTION: WAS THERE ANY CASE IN YOUR PRACTICE, WHEN DURING THE SENTENCE APPOINTMENT IT WAS CONSIDERED THAT 15 YEARS IMPRISONMENT WAS INSUFFICIENT AND LIFE IMPRISONMENT WAS TOO SEVERE PUNISHMENT FOR THE OFFENCE?		
Options for Answers	Number	Percentage
Yes	218	36.5%
No	145	24%
There were no such cases	238	39.5%

Responses to the question (Table 6):

“Is it expedient to increase the upper limit of the punishment in the form of deprivation of liberty for certain period for the especially grave crimes, which are subject to the life imprisonment?”

Table 6 RESPONSES TO THE QUESTION: IS IT EXPEDIENT TO INCREASE THE UPPER LIMIT OF THE PUNISHMENT IN THE FORM OF DEPRIVATION OF LIBERTY FOR CERTAIN PERIOD FOR THE ESPECIALLY GRAVE CRIMES, WHICH ARE SUBJECT TO THE LIFE IMPRISONMENT?		
Options for Answers	Number	Percentage
Yes	481	60%
No	245	30.5%
It is difficult to respond	63	7.8%
	789	

Some respondents said "No" due to the fact that they think that the State has no right to impose sentences to the life imprisonment, because there is poor legal protection of the accused persons and no trust to the courts. There are also some other options of responses: not to increase the upper limit of punishment, but to expand the range of crimes for which it will be possible to impose penalties in the form of life imprisonment. Some respondents supported the return of the death penalty. In contrast, they express the idea that life imprisonment is the hidden form of death penalty. Therefore, it is necessary to liquidate life imprisonment and to increase the upper limit of punishment. There are also proposals to sentence offenders to life imprisonment only in some cases (e.g. for the crimes against a person). The range of such responses is within 0.1%-0.3%.

There is a wide range of responses to the question (Table 7):

"What upper level of deprivation of liberty would be appropriate?"

Table 7 RESPONSES TO THE QUESTION: WHAT UPPER LEVEL OF DEPRIVATION OF LIBERTY WOULD BE APPROPRIATE?		
Options for Answers	Number	Percentage
15 years	17	2.1%
20 years	115	14.3%
25 years	274	34.1%
30 years	150	18.6%
35 years	1	0.1%
35 years	2	0.2%
40 years	1	0.1%
45 years	2	0.2%
50 years	4	0.4%
60 years	1	0.1%
It is difficult to respond	2	0.2%

Table 7 RESPONSES TO THE QUESTION: WHAT UPPER LEVEL OF DEPRIVATION OF LIBERTY WOULD BE APPROPRIATE?		
No (not necessary)	22	2.7%
Life imprisonment	6	0.6%
Capital punishment (death penalty)	5	0.5%

In their responses to that question a number of respondents noted that the limit of punishment is irrelevant, the penitentiary system needs to be reformed, since today it does not provide proper correction. Some of them offered the maximum term only for the summation of crimes, for certain types of the grave crimes or for certain categories of offenders. In total, 52.7% of the respondents suggested to increase the maximum term of imprisonment to 25-30 years.

Responses to the question (Table 8):

"Is it appropriate to increase the upper limit of the sentence in the form of deprivation of liberty for certain period for the especially grave crimes in the articles, which envisage the maximum punishment in the form of 15 years of imprisonment?"

Table 8 RESPONSES TO THE QUESTION: IS IT APPROPRIATE TO INCREASE THE UPPER LIMIT OF THE SENTENCE IN THE FORM OF DEPRIVATION OF LIBERTY FOR CERTAIN PERIOD FOR THE ESPECIALLY GRAVE CRIMES IN THE ARTICLES, WHICH ENVISAGE THE MAXIMUM PUNISHMENT IN THE FORM OF 15 YERS OF IMPRISONMENT?		
Options for Answers	Number	Percentage
Yes	545	68.9%
No	186	23.3%
It is difficult to respond	49	6.1%
Yes, for certain crimes	5	0.6%
	785	

A number of respondents, responding to that question, supported the above-mentioned view that from the psychological point of view persons can be corrected or not corrected during three years. Therefore, the increase of the upper limit of punishment is inappropriate. Some respondents say that the issue is not the priority.

The respondents were also offered to choose the maximum term of imprisonment, which would be appropriate in their opinion.

The following question is rather important (Table 9):

"Do you agree to introduce the increase of the upper limit of punishment in the form of deprivation of liberty for certain term for the especially grave crimes, which are subject to the life sentence? Why?"

Table 9 RESPONSES TO THE QUESTION: DO YOU AGREE TO INTRODUCE THE INCREASE OF THE UPPER LIMIT OF PUNISHMENT IN THE FORM OF DEPRIVATION OF LIBERTY FOR CERTAIN TERM FOR THE ESPECIALLY GRAVE CRIMES, WHICH ARE SUBJECT TO THE LIFE SENTENCE? WHY?		
Options for Answers	Number	Percentage
No (I do not agree)	52	15.3%
15 years are not enough and the life imprisonment is too strict punishment	106	31.2%
It is difficult to respond	2	0.59%
Such increase would contribute to the individualization while choosing the type of punishment	13	3.83%
Such increase would contribute to the correction of the offender	40	11.7%
It is already fair	15	4.42%
For the complete isolation for ever	5	1.4%
It would reduce the recidivism level	13	3.8%
It would be fair	21	6.1%
It would influence the crime rate	6	1.7%
Yes, I agree	6	1.7%
Such is the practice of the developed countries	4	1.1%
It would introduce more alternative sanctions	11	3.2%
It would give the possibility to sentence the offenders taking into consideration their personality and the crime graveness	41	12%
It is necessary to return the death penalty	4	1.1%
	339	

Many of the options were simply groundless (e.g. *“Such are modern realities”, “It is necessary to do so”, “It will be better so”*, etc. (Table 10)

“I do not support the idea to increase of the upper limit of punishment in the form of deprivation of liberty instead of life imprisonment, because”:

Table 10 RESPONSES TO THE QUESTION: I DO NOT SUPPORT THE IDEA TO INCREASE THE UPPER LIMIT OF PUNISHMENT IN THE FORM OF DEPRIVATION OF LIBERTY INSTEAD OF LIFE IMPRISONMENT, BECAUSE...		
Options for Answers	Number	Percentage
I do not support this idea	56	26.1%
15 years are enough for correction	87	40.6%
I support this idea	44	20.5%
Life imprisonment is more appropriate	13	6%

Table 10 RESPONSES TO THE QUESTION: I DO NOT SUPPORT THE IDEA TO INCREASE THE UPPER LIMIT OF PUNISHMENT IN THE FORM OF REPRIVATION OF LIBERTY INSTEAD OF LIFE IMPRISONMENT, BECAUSE...		
I support this idea only if the death penalty is allowed	2	0.9%
It is difficult to respond	2	0.9%
It is necessary to improve the inmates living conditions and the judicial system	10	4.6%
	214	

Responses to the question (Table 11):

"I do not support the idea to increase of the upper limit of punishment in the form of deprivation of liberty instead of life imprisonment, because":

Table 11 RESPONSES TO THE QUESTION: I DO NOT SUPPORT THE IDEA TO INCREASE THE UPPER LIMIT OF PUNISHMENT IN THE FORM OF REPRIVATION OF LIBERTY INSTEAD OF LIFE IMPRISONMENT, BECAUSE...		
Options for Answers	Number	Percentage
I do not support this idea	60	21.5%
15 years are enough for correction	71	25.4%
I support this idea	25	8.9%
Individual approach, while sentencing, would be possible	7	2.5%
I support this idea only if the death penalty is allowed	2	0.7%
It is difficult to respond	3	1.07%
Crime rate would be decreased	10	3.5%
International experience	3	1.07%
Punishment should correspond to the crime graveness	17	6.09%
It is my opinion	30	10.7%
Negative influence of the "Savchenko Law"	5	1.7%
It would contribute to the correction and resocialisation	32	11.4%
15 years imprisonment was insufficient and life imprisonment was too severe punishment	14	5.01%
	279	

The option of the response:

"I do not support the increase of the upper limit of punishment in the form of deprivation of liberty for a certain period for the especially grave crimes in the articles, which envisage the maximum punishment in the form of 15 years of imprisonment, because:"

Was not used by the respondents. So, 100% of respondents support the idea to increase the upper limit of punishment, which will lead to more differentiated approach to appointing the punishment.

The response to the question *"What circumstances, in your opinion, can lead to increasing the upper limit of punishment in the form of imprisonment for certain period (it was possible to choose several options)?"* were the following: If any changes of the sentence may be done, the following should be taken into account: the crime graveness and some other individual features. Some answers have no scientific meaning nor justification (e.g. *"let God forgives the offender"*).

It was possible to choose several options (Table 12):

"What consequences, in your opinion, can follow the increase of the upper limit of punishment in the form of imprisonment for certain period?"

The following responses were provided:

Table 12 RESPONSES TO THE QUESTION: WHAT CONSEQUENCES, IN YOUR OPINION, CAN FOLLOW THE INCREASE OF THE UPPER LIMIT OF PUNISHMENT IN THE FORM OF IMPRISONMENT FOR CERTAIN PERIOD?		
Options for Answers	Number	Percentage
More persons would be convicted to 15 and more years of imprisonment	368	52.8%
Less persons would be convicted to the life imprisonment	307	44.1%
Both above mentioned statements	5	0.7%
Nothing would be changed	14	2.01%
It is difficult to respond	2	0.28%
	696	

A number of respondents noted that the main negative consequences of increasing the upper limit of punishment would be:

1. The convicts will not be able to resocialize in the society after the long-term sentence is served.
2. The sentences in the form of imprisonment for more than 15 years in the summation of crimes may not be proportionate with the committed crime.
3. The punishment will be the end in itself and will only cause additional expenses.

Responses to the question (Table 13):

"Is it appropriate to increase the upper limit of punishment or summation of sentences for the especially grave crimes in the articles of the Criminal Code, which provide punishment in the form of life imprisonment?"

Table 13 RESPONSES TO THE QUESTION: IS IT APPROPRIATE TO INCREASE THE UPPER LIMIT OF PUNISHMENT OR SUMMATION OF SENTENCES FOR THE ESPECIALLY GRAVE CRIMES IN THE ARTICLES OF THE CRIMINAL CODE, WHICH PROVIDE PUNISHMENT IN THE FORM OF LIFE IMPRISONMENT?		
Options for Answers	Number	Percentage
Yes	488	62.6%
No	216	27.7%
It is difficult to respond	71	9.1%
No limits for punishment	4	0.5%
	779	

The rest of the respondents believe that such actions are inappropriate either because of inadequate judicial system or because of poor living conditions of convicts that do not contribute to their correction. There are also some unsubstantiated answers. The responses concerning the most appropriate maximum term of imprisonment are the following (Table 14):

Table 14 THE RESPONSES CONCERNING THE MOST APPROPRIATE MAXIMUM TERM OF IMPRISONMENT		
Options for Answers	Number	Percentage
No response provided	4	0.7%
15 years	9	1.6%
20 years	10	1.8%
25 years	215	38.4%
30 years	152	
Up to 35 years	-	
35 years	142	27.1%
40 years	2	0.35%
45 years	-	
50 years	8	1.4%
60 years	2	0.35%
70-75 years	2	0.35%
200 years	1	0.17%
It is difficult to respond	1	0.17%
No (not necessary)	5	0.89%
Life imprisonment	4	0.7%
Capital punishment (death penalty)	2	0.35%
	559	

A number of respondents say that the increase of the term of punishment can be imposed only as a result of the sentences summation, or taking into account all the circumstances of the criminal case.

Consequently, the majority of responses (215) support the idea to increase the maximum term of imprisonment up to 25 years, but only as a result of the sentences summation. But the current legislation already envisages such term: "*...if at least one of the committed crimes is especially grave, the term of imprisonment as a result of the sentences summation may be more than 15 years, but should not exceed 25 years*" (part 2 of the article 71 of the Criminal Code of Ukraine).

The same contradiction is in the question (Table 15):

"Is it appropriate to increase the upper limit of punishment as a result of the sentences summation for the especially grave crimes in those articles, which envisage the maximum sentence of 15 years of imprisonment?"

Table 15		
RESPONSES TO THE QUESTION: IS IT APPROPRIATE TO INCREASE THE UPPER LIMIT OF PUNISHMENT AS A RESULT OF THE SENTENCES SUMMATION FOR THE ESPECIALLY GRAVE CRIMES IN THOSE ARTICLES, WHICH ENVISAGE THE MAXIMUM SENTENCE OF 15 YEARS OF IMPRISONMENT?		
Options for Answers	Number	Percentage
Yes	564	71%
No	144	18.7%
It is difficult to respond	50	6.5%
Life imprisonment	3	0.39%
I do not follow this idea	7	0.9%
	768	

A number of respondents indicate that the increase of the punishment is appropriate as a result of the sentences summation or after taking into account all the circumstances of the criminal case. Accordingly, they chose the most expedient term (Table 16):

Table 16		
THE MOST EXPEDIENT TERM OF IMPRISONMENT, CHOSEN BY THE RESPONDENTS		
Options for Answers	Number	Percentage
No response provided	1	0.16%
15 years	11	1.78%
20 years	15	2.43%
25 years	294	47.8%
30 years	139	22.6%
Up to 35 years	-	

35 years	128	20.8%
40 years	1	0.16%
45 years	-	
50 years	7	1.1%
60 years	1	0.16%
70-75 years		
200 years		
It is difficult to respond	6	0.9%
No (not necessary)	5	0.81%
Life imprisonment	5	0.81%
Capital punishment (death penalty)	2	0.32%
	615	

We should pay attention to the answers given by respondents to the question (Table 17):

"What is the purpose of the punishment in the form of the long-term imprisonment in Ukraine? Mark in order of importance".

We see that despite the humanization of the sentencing process, the majority of the respondents still believe that its main purpose remains punishment.

Options for Answers	The Main Purpose	It Should be Realized in the Process of Enforcement of Sentences	Not Important
Punishment	479	179	40
General prevention	207	267	177
Special prevention	160	296	90
Correction of convicts	274	320	71

Quite debatable are the following answers to the question (Table 18):

"Do you support the idea that the long-term imprisonment complicate the reintegration of the convicts in Ukraine?"

Since many respondents are aware of the criminal and legal risks arising from the increase of the maximum term of deprivation of liberty. Nevertheless, they support the idea to

increase in the upper limit of imprisonment. Therefore, comparing the answers to both questions, it becomes obvious their contradictions.

Table 18		
RESPONSES TO THE QUESTION: DO YOU SUPPORT THE IDEA THAT THE LONG-TERM IMPRISONMENT COMPLICATE THE REINTEGRATION OF THE CONVICTS IN UKRAINE?		
Options for Answers	Number	Percentage
Yes	370	48.8%
No	261	34.4%
It is difficult to respond	126	16.6%
	757	

A number of respondents say that any imprisonment requires the re-integration into the society, regardless of the term of punishment, envisaged by the sentence. Some respondents say that after committing crime the offender “falls out” of the society. On the contrary, other respondents consider that the role of the length of punishment in the process of the convicts’ reintegration into the society is rather exaggerated. There are those who believe that the reintegration, regardless of the term of punishment, is in the competence of the penal establishments, but it is necessary to pay attention to the opinion of those, who say that the conditions, in which convicts serve their sentence, and the state policy in the open society concerning the released persons also matters for their reintegration.

One set of questions was devoted to the mechanisms for the early release of the lifers. To the question (Table 19):

"Is it sufficient to have only the mercy mechanism for the life-sentenced convicts to be released?"

There were the following answers:

Table 19		
RESPONSES TO THE QUESTION: IS IT SUFFICIENT TO HAVE ONLY THE MERCY MECHANISM FOR THE LIFE-SENTENCED CONVICTS TO BE RELEASED?		
Options for Answers	Number	Percentage
Yes	387	49.5%
No	300	38.4%
It is difficult to respond	82	10.4%
Mercy is not necessary	6	0.76%
Disease	3	0.38%
They should never be released	3	0.38%
	781	

A number of respondents say that the mercy mechanism is not efficient and some new institutes are necessary for the early release of lifers. Due to the ineffective judicial and

penitentiary systems, there may be abuses in that sphere, but the idea of the ineffectiveness of the mercy institute remains more than controversial. Of course, it does not mean that it is completely perfect and there is no need to improve the legal regulation of the mercy procedure (Table 20). It remains unclear what *"new institutes should be introduced for the release of lifers"*.

"Do you support the idea to introduce some other possibility for the release of lifers, except the mercy institute after certain period of time and under certain conditions?"

Results of the questionnaire on the expediency of increasing the upper limit of punishment in the form of imprisonment for certain period of time carried out by the Institute of the Criminal-Executive Service on behalf of the interdepartmental working group on penitentiary reform of the Parliamentary Committee on legislative support of the law enforcement bodies.²

Table 20		
RESPONSES TO THE QUESTION: DO YOU SUPPORT THE IDEA TO INTRODUCE SOME OTHER POSSIBILITY FOR THE RELEASE OF LIFERS, EXCEPT THE MERCY INSTITUTE AFTER CERTAIN PERIOD OF TIME AND UNDER CERTAIN CONDITIONS?		
Options for Answers	Number	Percentage
Yes	285	36.3%
No	430	54.9%
It is difficult to respond	66	8.4%
Only if the early release of lifers is related to the negligence crimes or if the personal participation of the convicts in committing crime was not considerable, excluding the participation in the organized criminal groups.	2	0.25%
	783	

Responses to the question (Table 21):

"Do you support the idea to change the conditions (regime) of holding lifers at the penal establishments after certain period of time and under certain conditions?"

Table 21		
RESPONSES TO THE QUESTION: DO YOU SUPPORT THE IDEA TO CHANGE THE CONDITIONS (REGIME) OF HOLDING LIFERS AT THE PENAL ESTABLISHMENT AFTER CERTAIN PERIOD OF TIME AND UNDER CERTAIN CONDITIONS?		
Options for Answers	Number	Percentage
Yes	442	56.8%
No	269	34.6%
It is difficult to respond	66	8.4%
	777	

A number of respondents support the above mentioned idea, but only after the correction of such convicts, on one hand, and overcoming of such negative phenomena as corruption and abuse of power in our country, on the other hand.

Responses to the question (Table 22):

“Is it appropriate, in your opinion, to introduce the mechanism of the sentences revision at any stage of imprisonment of the convicts, who committed especially grave crimes?”

Table 22 RESPONSES TO THE QUESTION: IS IT APPROPRIATE, IN YOUR OPINION, TO INTRODUCE THE MECHANISM OF THE SENTENCES REVISION AT ANY STAGE OF IMPRISONMENT OF THE CONVICTS, WHO COMMITTED ESPECIALLY GRAVE CRIMES?		
Options for Answers	Number	Percentage
Yes	214	27.2%
No	474	60.3%
It is difficult to respond	70	8.9%
Yes, but only after certain period of serving the sentence (10 years, 15 years, 25 years, 2/3 of the term)	25	3.1%
Revision of the sentence after obtaining the new circumstances of the crime	3	0.38%

Responses to the question (Table 23):

“Do you support the principle of less repression and introduction of alternative sanctions?”

Table 23 RESPONSES TO THE QUESTION: DO YOU SUPPORT THE PRINCIPLE OF LESS REPRESSION AND INTRODUCTION OF ALTERNATIVE SANCTIONS?		
Options for Answers	Number	Percentage
Yes, it is necessary to use the minimum strict measure of the criminal-legal influence	45	6.1%
Yes, it is important not to punish the offender, but to protect and reimburse the crime victims	197	26.8%
No, punishment should correspond to the crime graveness it is necessary to use the maximum strict measure of the criminal-legal influence	349	47.5%
Partially because imprisonment is the main measure to decrease the crime rate	143	19.4%

Many respondents support the strict measure, but not violating the basic principles of punishment, guaranteeing the observance of the rights and freedoms of all participants of the criminal and criminal-executive relations and ensuring the security of the society.

CONCLUSION

Taking into consideration the results of the research, the following should be noted as the conclusion:

1. Respondents, while answering the questions distort the notion of the purpose of imprisonment by placing the punishment on the first place. Moreover, in their opinion, it is achieved by holding convicts at the penal establishments for as long as possible, but it is not the main purpose of punishment in reality. Imprisonment is carried out only for the purpose of isolating the socially-dangerous elements until they are re-socialized to ensure the safety of the society.
2. Unfortunately, the anti-humanistic attitude to the criminal-executive legislation is wide-spread among the interviewed respondents. First of all, this is due to the fact that prosecutors, investigators, officials of the State Criminal-Executive Service of Ukraine and the State Security Service of Ukraine dominated among the respondents (87.5%). They do not pay attention to the global trend (first of all, taking into account the legislation of the developed democracies, in particular the Western Europe) and the direction of the domestic criminal-law policy related to the humanization of the criminal responsibility of the persons, who are convicted for committing crimes. For example, adoption of the Law of Ukraine "On amendments to the Criminal Code of Ukraine and Criminal-Procedural Code of Ukraine on the humanization of the criminal liability" of April 15, 2008 and the introduction of the category "criminal misconduct". There are some answers, that even 15 years of imprisonment are not enough for the re-socialization, although several researches confirm that the longer a person is in places of deprivation of liberty, the harder it is to retain socially significant links and return to the law-abiding way of life.
3. Responses of the respondents to the main questions of the questionnaire are often controversial and do not take into account the current rules on the possibility of imposing sentences in the form of imprisonment up to 25 years. By the way, there are no examples of such sentences in Ukraine. In addition, a number of respondents rather literally perceive the notion "life imprisonment", which in fact envisages the possibility of early release, which is currently contained in many standards developed by the European Committee for the Prevention of Tortures, e.g. The Memorandum "Actual/real life imprisonment" (CPT (2007) 55) and many other international standards for the lifers. Therefore, it would be advisable to consider changing the notion "lifer". Instead of increasing the maximum sentence, it is more appropriate to consider the possibility of imposing punishment by courts for certain types of crimes without being bound by certain numerical term, but taking into account all the circumstances of the criminal case and the possibility of a differentiated approach to the revision of the sentence after certain period of imprisonment, as well as the early release from the long-term imprisonment, which gives the possibility to continue the implementation of such concept in the direction of humanizing the execution of criminal punishment and move the Ukrainian legislation one more step closer to the international one.

ENDNOTE

1. Explanatory note to the draft Law of Ukraine on amendments to certain legislative acts of Ukraine regarding the use of sentences in the form of life imprisonment. Retrieved from <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=52660&pf35401=318463>
2. Results of the questionnaire on the expediency of increasing the upper limit of punishment in the form of imprisonment for certain period of time carried out by the Institute of the Criminal-Executive Service on behalf of the interdepartmental working group on penitentiary reform of the Parliamentary Committee on legislative support of the law enforcement bodies. Retrieved from http://ikvsu.kvs.gov.ua/sites/default/files/files/rezultati_anketuvannya_shchodo_verhnoyi_mezhi_pokarannya.pdf

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